

NEBRASKA ADMINISTRATIVE CODE

TITLE 270 - NEBRASKA BOARD OF PAROLE

Chapter 10 - Preliminary Hearing for Alleged Violations

001 The preliminary hearing shall be conducted by an impartial hearing officer not directly involved in the case.

002 The preliminary hearing shall be conducted at or reasonably near the place of the alleged violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available.

003 It shall be the duty of the hearing officer to conduct hearings in a fair, impartial, and orderly manner, and the hearing officer shall have the authority subject to other provisions of these Rules and Regulations.

003.01 The hearing officer shall rule on all procedural matters, objections, and motions.

003.02 The hearing officer shall rule on offers of proof and admit relevant evidence.

003.03 The hearing officer shall hear testimony and interrogate witnesses called by the parties involved in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matters at issue.

003.04 The hearing officer shall determine the matter at issue and cause to be published a summary and digest of the hearing.

003.05 The hearing officer shall take any other action necessary and authorized by these Rules and Regulations and the law.

003.06 Upon request before or during a preliminary hearing, the hearing officer may officially recognize:

003.06A Federal Law - The Constitution of the United States, United States Code, and decisions of the Federal Courts.

003.06B State Law - The Constitution of the State of Nebraska, Statutes of Nebraska, and decisions of the Nebraska Supreme Court and the District Courts of Nebraska.

004 Preliminary hearing rules of evidence:

004.01 All relevant evidence shall be admissible.

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004.02 The hearing officer shall give consideration to, but shall not be bound to follow, the Nebraska Rules of Evidence.

004.03 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling.

004.04 The hearing officer may, subject to his discretion, either with or without objection, exclude inadmissible evidence.

004.05 Parties objecting to the introduction of evidence at the preliminary hearing shall state the precise grounds of such objection at the time such evidence is offered.

005 Whenever a parole officer has just cause to believe a parolee has violated the conditions of parole, the parole officer shall file a petition with the hearing officer.

005.01 The petition shall request a preliminary hearing.

005.02 The petition shall state the names of the parties involved.

005.03 The petition shall state the facts which the parole officer believes necessitates a preliminary hearing.

006 The parolee shall be given written notice that a preliminary hearing has been scheduled.

006.01 The notice shall state that the purpose of the hearing is to determine if probable cause exists that the parolee violated the conditions of parole.

006.02 The notice must state the specific alleged violations.

007 No person may appear in a representative capacity at a preliminary hearing other than the following:

007.01 The parolee acting in his/her own behalf.

007.02 Attorneys-at-law duly qualified to practice before the courts of the State of Nebraska.

007.03 Any authorized representative of the State of Nebraska. This individual need not be an attorney.

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008 At the preliminary hearing:

008.01 The parolee may appear and speak in his/her own behalf.

008.02 The parolee may bring letters, documents, or individuals who can give relevant information.

008.03 The parolee shall be afforded the opportunity to be confronted by his accusers and to present evidence and testimony on his/her own behalf.

008.04 The parolee may request the availability for questioning in his/her presence persons who have given adverse information on which parole review may be based.

008.05 If the hearing officer determines that the informant would be subjected to risk of harm by the disclosure of identity, the informant need not be subjected to confrontation and cross-examination.

008.06 If it appears to be in the public interest or in the interest of justice, the hearing officer may, at his discretion, or upon notice by the parolee or his/her counsel, continue the hearing and fix a date for the introduction of additional evidence or presentation of an argument.

009 Following the preliminary hearing:

009.01 Within a reasonable period of time after the preliminary hearing, not to exceed 10 days, the hearing officer shall make a determination whether there is probable cause or not to believe that a violation of parole has occurred.

009.02 Upon finding no probable cause, the hearing officer shall immediately notify the Board of the finding and request the parolee's release from custody.

009.03 A finding of probable cause is sufficient to warrant the parolee's continued detention and return to the Department of Correctional Services pending a Review of Parole and a final decision by the board.

009.04 As soon as possible after the hearing officer has reached a decision, the parole officer shall inform the board of the finding.

AUTHORITY

Morrissey v. Brewer (1972)